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State v. Gonzales Appellant's Reply Brief Dckt. 40038

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,)	NO. 40038
)	
v.)	BANNOCK COUNTY
)	NO. CR 2011-1447
)	
MATTHEW JAMES GONZALES,)	REPLY BRIEF
)	
Defendant-Appellant.)	
_____)	

COPY

REPLY BRIEF OF APPELLANT

APPEAL FROM THE DISTRICT COURT OF THE SIXTH JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF BANNOCK

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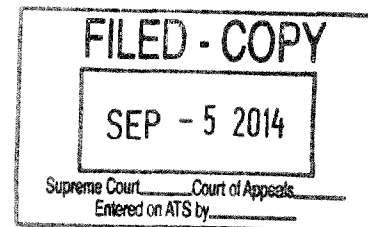


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STATEMENT OF THE CASE

Nature of the Case

Pursuant to a plea agreement, Matthew James Gonzales, pled guilty to one count of felony injury to a child. He received a unified sentence of ten years, with five years fixed.

On appeal, Mr. Gonzales contends the district court erred in denying his motion to withdraw his guilty plea, as that plea was not knowing, intelligent and voluntary. Mr. Gonzales also contends that his sentence represents an abuse of the district court's discretion because, given any view of the facts in this case and in Mr. Gonzales' life, a sentence of ten years, with five years fixed, is excessive.

This reply brief is necessary to address the State's claim that Mr. Gonzales asserted a claim of ineffective assistance of counsel as an issue in his Appellant's Brief.

Statement of the Facts and Course of Proceedings

The statement of the facts and course of proceedings were previously articulated in Mr. Gonzales' Appellant's Brief. They need not be repeated in this Reply Brief, but are incorporated herein by reference thereto.

ISSUES

1. Did the district court err in denying Mr. Gonzales' Motion to Withdraw Guilty Plea?
2. Did the district court abuse its discretion when it imposed upon Mr. Gonzales a sentence of ten years, with five years fixed, following his plea of guilty to felony injury to a child?¹

¹ Mr. Gonzales will not further address the sentencing issue, but will rely on the arguments previously set forth in his Appellant's Brief. (Appellant's Brief, pp.18-21.)

ARGUMENT

The District Court Erred In Denying Mr. Gonzales' Motion To Withdraw His Guilty Plea, As Mr. Gonzales' Plea Of Guilty Was Not Knowing, Intelligent And Voluntary

Mr. Gonzales filed a motion to withdraw his guilty plea after sentencing. The district court denied Mr. Gonzales' motion. Mr. Gonzales asserts that the district court erred in denying his motion to withdraw his guilty plea, as Mr. Gonzales did not understand the elements of the offense at the time of his plea. Because Mr. Gonzales pled guilty without understanding the element of the crime, his guilty plea could not have been knowing, intelligent, and voluntary under I.C.R. 11. As such, Mr. Gonzales established that a manifest injustice would result if he was not allowed to withdraw his guilty plea.

The State claims that because Mr. Gonzales is arguing that "his plea was constitutionally invalid because his attorney erroneously informed him of the mental state necessary for guilt and this error was never corrected on the record," it is, "at its core" a claim of ineffective assistance of counsel. (Respondent's Brief, p.8.) The State asserts that the district court should have declined to consider the claim and instead allowed Mr. Gonzales to assert it in a petition for post-conviction relief. (Respondent's Brief, p.8.) This proposition is absurd, as Mr. Gonzales specifically footnoted the following, in his Appellant's Brief:

By asserting that he relied on any inaccurate statements or misrepresentations of the law by his counsel, Mr. Gonzales does not assert any claim of ineffective assistance of counsel herein, but chooses to reserve any such claim for any future petition for post-conviction relief, should one be forthcoming. See *Matthews v. State*, 122 Idaho 801, 806 (1992) (defendant may raise claims of ineffective assistance of counsel either on direct appeal or through a petition for post-conviction relief, but not both).

(Appellant's Brief, p.1 n.1.) Thus, Mr. Gonzales clarified, on the first page of his brief, that he was not claiming ineffective assistance of counsel in this appeal, but was instead asserting that the district court erred in denying his motion to withdraw his guilty plea because that plea was not knowing, intelligent and voluntary. (Appellant's Brief, p.1.)

Indeed, the State is proposing that Mr. Gonzales should decline to seek a remedy in the district court, so that he can later file a petition asserting that he received ineffective assistance of counsel for which the remedy, assuming he prevails on his claim, would presumably be to have his plea withdrawn. (Respondent's Brief, p.8.) What the State proposes as the proper procedural posture for this claim would result in the very antithesis of judicial economy.

One case the State relies on for the proposition that ineffective assistance of counsel claims are properly raised through post-conviction proceedings, *State v. Hayes*, 138 Idaho 761 (Ct. App. 2003), is distinguishable because in that case, unlike here, the appellant actually did assert as a claim on direct appeal that he received ineffective assistance of counsel. Here, Mr. Gonzales did not make such an assertion, and expressly disavowed such a reading of his Appellant's Brief.²

² Further, in implying that ineffective assistance of counsel claims are prohibited on direct appeal, the State mischaracterizes the holding of the Idaho Court of Appeals in *Hayes*. In *Hayes*, the Court declined to address the claim, and noted that it ordinarily did not address claims of ineffective assistance of counsel on direct appeal because "the record on direct appeal is rarely adequate for review of such claims." *Hayes*, 138 Idaho at 766. The Court did not expressly prohibit such a claim, but instead noted that it chose not to address such claims in order to allow the claim to be litigated in a post-conviction case. *Id.*

In this case, the State concedes that the district court erred in its analysis of whether Mr. Gonzales should have been allowed to withdraw his guilty plea. (Respondent's Brief, pp.9, 11.) The State concedes that the district court used the incorrect standard when it denied Mr. Gonzales' motion to withdraw his guilty plea. (Respondent's Brief, p.11.) The State appears to be trying to re-frame the issue(s) on appeal in an attempt to negate its concession.

At the time he entered a guilty plea, Mr. Gonzales set forth facts which omitted the willfulness element of the crime. (1/10/12 Tr., p.8, L.21 – p.9, L.22.) Willfulness is a necessary element of felony injury to a child, and the statute requires that the person providing care or custody of the child willfully endanger the child by subjecting the child to a known risk of harm. *State v. Morales*, 146 Idaho 264, 267 (Ct. App. 2008); *State v. Halbesleben*, 139 Idaho 165, 170 (Ct. App. 2003). Further, "without willful intent the information would describe a non-crime." *State v. Jones*, 140 Idaho 755, 759 (2004). The district court perpetuated the error by affirmatively telling Mr. Gonzales that it was the court's opinion that what Mr. Gonzales admitted was enough for him to be found guilty under the applicable statute, "Mr. Gonzales, it is my opinion that what you have told me is enough for you to be found guilty under the statute." (1/10/12 Tr., p.10, Ls.5-7.) Here, Mr. Gonzales did not understand the nature of the crime—he pled guilty with the belief that he could be found guilty of the crime even when his only error was in being in the same house as the child when the child was injured. (Affidavit of Matthew Gonzales in Support of Motions to Withdraw Guilty Plea, p.6, attached to the Motion to Augment filed on 3/4/14.) However, the willfulness element of I.C. § 18-1501 requires that Mr. Gonzales placed the child in a potentially harmful situation with knowledge of

the danger. Mr. Gonzales pled guilty without understanding all of the elements of the crime, and therefore, his plea was not knowing, intelligent and voluntary.

The State asserts that the district court did not reach the issue of what advice counsel provided to Mr. Gonzales at the guilty plea hearing, and this fact should be established during post-conviction proceedings. (Respondent's Brief, p.11.) However, Mr. Gonzales' assertion of what his counsel told him was never controverted at any point, and the State never requested a hearing at which it could have cross-examined Mr. Gonzales as to what he was told by his counsel.

The State also cites to *State v. Salazar-Garcia*, 145 Idaho 690, 693 (Ct. App. 2008), which was a case in which the Court of Appeals held that where the record shows that neither the defendant, his counsel, nor the court correctly understood the essential elements of the crime, a guilty plea is constitutionally invalid. The Court held that the motion to withdraw his plea should have been granted, and it reversed the district court's order denying the motion to withdraw guilty plea and remanded the case for further proceedings. *Id.* at 693-94. Such are the circumstances in this case, and, accordingly, this Court should reverse the order denying Mr. Gonzales' motion and remand the case for further proceedings.

CONCLUSION

Mr. Gonzales respectfully requests that this Court reverse the district court's order denying his motion to withdraw his guilty plea and remand the case for further proceedings.

DATED this 5th day of September, 2014.



SALLY J. COOLEY
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 5th day of September, 2014, I served a true and correct copy of the foregoing APPELLANT'S REPLY BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

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E-MAILED BRIEF

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